



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTT SAVINO and LUIS COLON,
on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

VISITING NURSE SERVICE OF NEW YORK, and
VNS CHOICE,

Defendants.

X
: Case No. 15 Civ. 9451 (AT) (HBP)
:
: **STIPULATION AND**
: **ORDER**
: **REGARDING CIRCULATION**
: **OF CONDITIONALLY**
: **CERTIFIED COLLECTIVE**
: **ACTION NOTICES**
:
:
X

Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiffs filed a motion, pursuant to 29 U.S.C. § 216(b), to conditionally certify this matter as a collective action (ECF Nos. 46-48);

WHEREAS, counsel for Plaintiffs and Defendants entered into negotiations regarding the appropriate scope of the conditional collective and the appropriate forms of notice to circulate to that conditional collective;

WHEREAS, the parties have reached agreement on the scope of the conditional collective and forms of the notice in this matter, resolving Plaintiffs' Motion for Conditional Certification; and,

WHEREAS, the parties have agreed that Plaintiffs may circulate the Notice of Pendency, attached as Exhibit A ("Ex. A"), the Consent to Join Form, attached as Exhibit B ("Ex. B"), and the Reminder Notice, attached as Exhibit C ("Ex. C") to the current and former Community Outreach Coordinators who worked for either of the Defendants in New York State at any time from three years prior to the date the Court so orders this stipulation, through the present.

NOW THEREFORE IT IS STIPULATED, AGREED AND ORDERED AS FOLLOWS:

1. Within ten days of the date on which the Court so orders this Stipulation, Defendants shall provide to Plaintiffs' counsel in electronic form, the names, last known addresses and last known personal email addresses of all current and former Community Outreach Coordinators, who worked for either of the Defendants in New York State at any time three years prior to the date of the Court's Order until present;
2. Within five days of receipt of the names, addresses and email addresses set forth in ¶ 1 above, Plaintiffs' counsel shall circulate the Notice of Pendency, Ex. A and Consent to Join Form, Ex. B to the individuals whose information was provided in ¶ 1;
3. Defendants will not be required to post the Notice of Pendency, the Consent to Join Form, and/or the Reminder Notice at Defendants' offices;
4. Putative members of the conditionally certified collective action shall have sixty calendar days from the date Plaintiffs' counsel completes the mailing, set forth in ¶ 2 above, in which to file their consent form to join this action.
5. The Consent to Join Form, Ex. B, will be returned to Plaintiffs' counsel at 534 Broadhollow Road, Suite 275, Melville, New York 11747; the Reminder Notice, Ex. C, will be sent to putative members of the conditionally certified collective halfway through the notice period; and

6. Plaintiffs' motion for conditional certification (ECF Nos. 46-48) is withdrawn.

SHULMAN KESSLER LLP

By: _____

Troy L. Kessler
Marijana Matura
Garrett Kaske
534 Broadhollow Road, Suite 275
Melville, New York 11747
Telephone: (631) 499-9100

Attorneys for Plaintiffs

COLLAZO FLORENTINO & KEIL LLP

By: _____

Philip F. Repash
Kristina T. Grimshaw
Amanda M. Baker
747 Third Avenue, 25th Floor
New York, New York 10017
Telephone: (212) 758-7600

Attorneys for Defendants

SO ORDERED. The Clerk of Court is directed to terminate
the motion at ECF No. 46.

Dated: September 1, 2016
New York, New York



ANALISA TORRES
United States District Judge

EXHIBIT A

If you worked for Visiting Nurse Service of New York or VNS CHOICE (collectively referred to as “VNSNY” or “Defendants”), in the State of New York as a Community Outreach Coordinator, at any time between (three years prior to the date of the Court’s Order) and the present, please read this notice.

A collective action lawsuit may affect your legal rights.

This is not a solicitation from a lawyer.

- Former VNSNY employees, Scott Savino and Luis Colon (collectively called “the Plaintiffs”) filed a lawsuit on behalf of themselves and other Community Outreach Coordinators claiming that VNSNY violated the federal Fair Labor Standards Act (“FLSA”) by improperly classifying them as exempt employees, thereby denying them overtime wages for all of the hours they worked.
- The lawsuit is proceeding as a conditionally certified collective action on behalf of Community Outreach Coordinators who were employed by VNSNY at any time since (three years prior to the date of the Court’s Order). The lawsuit is known as *Savino, et al. v. Visiting Nurse Service of New York, et al.*, Case No. 15 Civ. 9451, and is pending before the Honorable Analisa Torres in the United States District Court in the Southern District of New York.
- Your legal rights may be affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
ASK TO BE INCLUDED	<p>By signing and sending in the Consent to Join form included with this Notice, you will “opt in” and become a Plaintiff in this conditionally certified collective action lawsuit. If you choose to be included, you may be entitled to share in any recovery that might come from a trial or a settlement in this lawsuit. By joining the lawsuit, you may be required to participate in the discovery process and testify in this case as explained in Paragraph 9 below.</p> <p>If you wish to be included, you must complete and return the Consent to Join form at the end of this Notice.</p>
DO NOTHING	<p>If you do not sign and send in the Consent to Join form included with this Notice, you will not join the conditional collective action. This means that you will forego the possibility of recovering under the FLSA in this lawsuit, if those bringing the lawsuit are successful. You retain your right to sue the Defendants separately over the federal claims addressed in this lawsuit. However, the limitations period on your federal claim continues to run.</p>

Your options are explained in this notice. To be included in the lawsuit, your Consent to Join form has to be received by Plaintiffs’ counsel and filed with the Court on or before [60 days after the date of mailing].

1. Why did I get this notice?

You are getting this notice because VNSNY's records show that you work or worked for VNSNY as a Community Outreach Coordinator in the State of New York in the last 3 years.

2. What is this lawsuit about?

The Lawsuit alleges that Community Outreach Coordinators were improperly classified as exempt workers and may be entitled to overtime pay for all hours worked over 40 per workweek under federal law.

The lawsuit is known as *Savino, et al. v. Visiting Nurse Service of New York, et al.*, Case No. 15 Civ. 9451, and is pending before the Honorable Analisa Torres in the United States District Court in the Southern District of New York.

3. What is a collective action and who is involved?

In a collective action, one or more plaintiffs can bring a lawsuit not just on their own behalf but on behalf of others who are "similarly situated" to them. The Plaintiffs in this case brought this Lawsuit on behalf of themselves and other Community Outreach Coordinators whom they claim are "similarly situated" to themselves. All employees who worked as Community Outreach Coordinators for VNSNY in the State of New York who join the case will become part of the lawsuit and will be called "Collective Action Plaintiffs" if this action is certified. The Court will resolve the issues for everyone who joins the case.

4. Why has this lawsuit been conditionally certified as a collective action?

The Court has authorized this case to proceed as a conditionally certified collective action under Section 216(b) of the FLSA, which means that the Judge in this case has authorized the mailing of this notice to all current and former Community Outreach Coordinators of VNSNY in New York so that they can decide whether to join the case as members of the "Collective."

5. What is the Defendants' position?

VNSNY maintains that its pay practices for its Community Outreach Coordinators fully compensated Community Outreach Coordinators for all the time they spent working. The Defendants maintain that Community Outreach Coordinators were properly classified as exempt employees and are not entitled to any overtime pay.

6. What are the Plaintiffs asking for?

The Lawsuit seeks to recover unpaid overtime wages and liquidated damages for Plaintiffs and others who join the case. The Lawsuit also seeks recovery of costs and attorneys' fees.

This notice does not mean that you have a valid claim or that you are entitled to any monetary recovery. Any such determination must still be made by the Court. The Court has not yet made any determination as to the merits of this case.

7. Can I join the collective?

Yes. If you received this Notice directly, VNSNY's records show that you may be eligible to join this Lawsuit because you were employed by VNSNY as a Community Outreach Coordinator in the State of New York at some point between (3 years prior to the Court's Order), and the present. If that is incorrect, you will not be eligible to participate in this lawsuit.

8. What happens if I do nothing at all?

If you do not choose to join this lawsuit, you will not be affected by any decision in this case, whether favorable or unfavorable. You will not be entitled to share any amounts recovered by the Plaintiffs as part of the lawsuit. You also will be free to hire your own lawyer and file your own lawsuit. You should be aware that your time to bring federal wage and hour claims is limited by a two or three-year statute of limitations. Delay in joining this action, or proceeding separately, may result in part or all of your potential claims expiring.

9. What happens if I join the lawsuit?

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will share in any settlement or judgment obtained by the Plaintiffs, and, conversely, if the Plaintiffs recover nothing, you recover nothing. By joining this lawsuit, and as set forth in the Consent to Join form, you agree to have the named Plaintiffs and their counsel act as your representatives and make decisions on your behalf concerning the case, including approving any settlement, entering into an agreement with counsel regarding payment of attorneys' fees and costs, and deciding all other matters pertaining to this lawsuit. Decisions made and agreements entered into by the Plaintiffs and their counsel will be irrevocably binding on you if you join the lawsuit, subject only to the Court's discretion.

While this suit is pending, as part of the discovery process you may be asked to provide documents or information relating to your employment at VNSNY, which may include responding to written questions and requests for documents. For this reason, if you join the lawsuit you have a legal duty to preserve all documents relating to your employment with VNSNY currently in your possession, custody or control. Failure to do so may result in Court-imposed sanctions, fines or other penalties being levied against you. You also may be asked to sit for a deposition and/or be asked to testify at a trial at the Southern District of New York Courthouse located in New York, New York.

10. Can Visiting Nurse Service of New York and/or my current employer retaliate against me because I join the lawsuit?

No. It is a violation of federal law for anyone to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

11. How do I ask the Court to include me in the case?

Enclosed is a form called "Consent to Join." If you choose to join this lawsuit, it is important that you read, sign, and promptly return the Consent to Join form. An addressed and postage-paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join form must be sent to:

Shulman Kessler LLP
Attn: Troy Kessler, Esq.
534 Broadhollow Road, Suite 275
Melville, New York 11747

You can also fax the Consent to Join form to (631) 499-9120 or email it to tk@shulmankessler.com.

Your Consent to Join form has to be received by Plaintiffs' counsel and filed with the Court on or before [60 days from date of mailing]. If you wish to join the lawsuit, but your signed Consent to Join form is not filed with the Court by that date, you may not be allowed to participate in the federal law portion of this lawsuit, or share in a monetary recovery on the federal law claims if Plaintiffs are successful.

12. Do I have a lawyer in this case?

If you choose to join this lawsuit, you will be represented by Plaintiffs' attorneys, Troy Kessler, Esq., Marijana Matura, Esq., of Shulman Kessler LLP, 534 Broadhollow Road, Suite 275, Melville, New York 11747. You also have the right to retain your own counsel.

13. Should I get my own lawyer?

You do not need to hire your own lawyer because the Plaintiffs' attorneys will be working on your behalf. However, you are permitted to retain your own lawyer.

14. How will the lawyers be paid?

You will not be required to pay any attorneys' fees or costs out of your own pocket. The Plaintiffs have entered into a contingency fee agreement with their attorneys. Under this agreement, if there is a settlement with VNSNY or if there is a trial and the Plaintiffs prevail, the Plaintiffs' attorneys will ask the Court to approve their attorneys' fees the greater of: (a) one-third of the recovery as legal fees or (b) the "lodestar" amount, calculated by multiplying their reasonable hourly rates by the number of hours expended on the lawsuit. You can obtain a copy of the contingency fee agreement executed by the Plaintiffs upon request from the Plaintiffs' counsel identified above.

15. Questions?

If you have any questions about this Lawsuit, please write or call Troy Kessler, Esq. at:

Shulman Kessler LLP
534 Broadhollow Road, Suite 275
Melville, New York 11747
(631) 499-9100
tk@shulmankessler.com

Dated: July __, 2016

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
SCOTT SAVINO and LUIS COLON,	: Case No. 15 Civ. 9451 (AT) (HBP)
on behalf of themselves and all others similarly situated,	:
	: CONSENT TO JOIN
Plaintiffs,	:
- against -	:
	:
VISITING NURSE SERVICE OF NEW YORK, and	:
VNS CHOICE,	:
	:
Defendants.	:
-----	X

1. I consent to be a party plaintiff in a lawsuit against Visiting Nurse Service of New York and VNS CHOICE in order to seek redress for alleged violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I authorize Plaintiffs' attorneys Shulman Kessler LLP ("Plaintiffs' Attorneys") to represent me in such lawsuit and to make decisions on my behalf concerning the litigation and any settlement. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable and to be bound by any settlement entered into on my behalf by the representative Plaintiffs and Plaintiffs' attorneys. I understand that reasonable costs expended by Plaintiffs' Attorneys on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that Plaintiffs' Attorneys will petition the Court to award them attorneys' fees from any settlement or judgment in the amount of the greater of: (1) their "lodestar" amount, calculated by multiplying their reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount.

Signature

Date

Print Name

Telephone Number

Email Address

EXHIBIT C

IMPORTANT REMINDER REGARDING

Visiting Nurse Service of New York and/or VNS CHOICE
Current and Former Community Outreach Coordinators

Case Against Visiting Nurse Service of New York and VNS CHOICE for Unpaid Overtime Wages

Within the last month, you should have received a notice explaining that you may be eligible to participate in a conditionally certified collective action lawsuit against Visiting Nurse Service of New York and VNS CHOICE on behalf of current and former community outreach coordinators. This case has been authorized to proceed as a conditional collective action under Section 216(b) of the FLSA. If you have any questions about the notice or the case, or if you did not receive or no longer have the notice, you should call Troy Kessler at 631-499-9100 or email at tk@shulmankessler.com. The notice does not mean that you have a valid claim or that you are entitled to any monetary recovery. Any such determination must still be made by the Court. The Court has not yet made any determination as to the merits of this case.

IMPORTANT: Our records indicate that you have not submitted a Consent to Be a Party Plaintiff. In order to participate in the Visiting Nurse Service of New York/VNS CHOICE collective action lawsuit and be eligible to collect unpaid wages, you must complete a Consent to be a Party Plaintiff form and mail, fax, or email it to:

Troy Kessler, Esq.
Shulman Kessler LLP
534 Broadhollow Road, Ste. 275
Melville, New York 11747
Telephone: (631) 499-9100 Fax: (631) 499-9120
Email: tk@shulmankessler.com

In order to participate in this lawsuit, your Consent Form must be post-marked or emailed no later than (60 days from mailing of Notice).

The Court in which this action is pending does not encourage or discourage participation in this action.

Shulman Kessler LLP
534 Broadhollow Road, Suite 275
Melville, New York 11747

[postage]

[first name] [last name]
[address] [address2]
[city], [state] [zip]